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Ìrean Àrainneachdail na h-Alba

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Constitution, Europe, External Affairs and Culture
Committee
Scottish Parliament
By email - CEEAC.committee@parliament.scot

4 December 2024

1. Environmental Standards Scotland (ESS) welcomes the opportunity to respond to the Constitution, Europe, External Affairs and Culture Committee's call for views on the Scottish Government's policy to align with European Union (EU) law.
2. ESS is a non-ministerial office (directly accountable to Scottish Parliament) with a remit to monitor and secure improvements to:
 - a. public bodies' compliance with environmental law;
 - b. the effectiveness of environmental law; and
 - c. the implementation and application of environmental law.
3. ESS monitors developments in international environmental standards and law (including at an EU level) in performing its functions. ESS has scrutinised several environmental issues and responded to various public consultations / calls for views. In these, ESS has identified several examples of developments in European legislation that the Scottish Government needs to consider in the context of its policy to keep pace with European policy and legislation where appropriate. These are set out below.
4. ESS has not considered any of the four instruments specifically identified by the Committee and therefore cannot comment on them.

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Ambient Air Quality (Limit Values)

5. In 2021, the World Health Organization updated its [Air Quality Guidelines](#) for key pollutants to protect human health. The EU responded by amending limit values for key pollutants through a revision of the [Ambient Air Quality Directive](#) (formally adopted by the European Parliament on 24 April 2024). ESS found ([Particulate Matter in Scotland – An assessment of the evidence, ambition and prospects](#)) that legislative proposals to tighten Scottish limits would need to be brought forward if alignment with the EU is to be maintained. This led to ESS recommending:

“The Scottish Government should, as soon as possible, bring forward proposals for new statutory standards for particulate matter currently set as limits under the Air Quality Standards (Scotland) Regulations 2010 (as amended), in recognition of the WHO Air Quality Guidelines updated in 2021. Specifically, this revision should include:

- introducing a new target for a 24-hour limit value for PM_{2.5}
- raising ambition on the current annual mean limit value for PM_{2.5}
- raising ambition on the 24-hour and annual mean limit value for PM₁₀
- introducing an exposure reduction target to replace the expired UK one”¹

6. In response to ESS’ recommendations, the Scottish Government have said they will consider the WHO guidelines in the development of a successor to the Clean Air for Scotland 2 strategy.
7. In September 2022, ESS published an [Improvement Report](#) following an investigation into the Scottish Government’s plans and approach to ensuring future compliance with legal limits on nitrogen dioxide levels. The report referred to the EU revising the air

¹ Particulate matter (PM) is one form of air pollution. It describes a very small collection of matter, either solid or liquid. There are currently standards set for PM₁₀, (those with diameter up to 10 micrometres (µm) in diameter) and PM_{2.5}, (those with diameter up to 2.5 µm).

quality standards to align them more closely with the recommendations of the WHO. The report also set out the uncertainty as to whether air quality limit values will be met in the future, especially given the longer-term European Union programme of reducing limit values further and the Scottish Government's commitment to 'keeping pace' with developments emanating from Europe. The Improvement Report concluded that:

“...if the Scottish Government decides to keep pace with EU plans to reduce limits for NO₂ further, ESS does not consider that the current system will be capable of meeting these revised limits effectively and efficiently and within the shortest time possible.”

8. The Scottish Parliament's Net Zero, Energy and Transport Committee [published](#) a report on the Scottish Government's Air Quality Improvement Plan published in response to ESS' investigation on 11 May 2023.

Ambient Air Quality (National Air Pollution Programme)

9. The Retained EU Law (Revocation and Reform) Act 2023 revoked Regulations 9 and 10 of the National Emissions Ceiling Regulations 2018. The 2018 Regulations transposed the requirements of the EU National Emissions Ceiling Directive. They required a process of revision (and public consultation) on a National Air Pollution Control Programme, if current or projected modelling suggested the current programme was insufficient to meet international emissions targets. This revocation created an accountability gap in demonstrating how Scotland's policies will make a proportionate contribution to UK emission targets. Therefore, ESS recommended:

“The Scottish Government should consider how best to fill the gap left by the UK Government's revocation of Regulations 9 and 10 of the National Emissions Ceiling Regulations 2018. Any replacement should ensure appropriate public scrutiny of Scotland's planned policies to address future emissions projection needs. Any replacement must also include a robust mechanism for delivering a proportionate contribution to UK emissions reductions.”

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10. The Scottish Government has expressed concerns about the UK proposals in a [letter to the Convener of the Scottish Parliament's Net Zero, Energy and Transport Committee](#) on 26 June 2024.

Urban Waste Water

11. The EU recently adopted a [recast Urban Waste Water Treatment Directive](#) (formally adopted by the European Parliament on 10 April 2024 and by the Council on 5 November 2024) which has significantly altered the requirements compared to its predecessor (adopted in 1991). Key changes include requirements to:
- produce integrated urban waste water management plans for the largest urban areas and some other areas where there is environmental risk, to combat pollution from urban run-off and storm water overflows – these should be reviewed every six years
 - assess the risks to the environment and human health of waste water discharge, including considering seasonal fluctuations and extreme events, by the end of 2027 – this should be aligned with RBMP processes
 - monitor pollutants from urban run-off, storm water overflows and the outlets of sewage treatment works
 - take all necessary measures (where technically feasible) to adapt collection and treatment infrastructure to address increased loads of domestic waste water
 - address vulnerability to climate change when designing, constructing and operating plants and collection systems
 - make easily accessible up-to-date information available online
12. ESS found ([Storm overflows – an assessment of spills, their impact on the water environment and the effectiveness of legislation and policy](#)) that the Scottish

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Government will need to review the legislation relating to waste water management² to maintain alignment with this development at a European level.

Soil Health

13. The European Commission tabled a proposal for a directive on soil monitoring and resilience ([The Soil Monitoring Law](#)) on 5 July 2023. This has not yet been formally adopted but is at an advanced stage with trilogue negotiations commencing in October 2024.
14. Additionally, the EU's [Nature Restoration Law](#) (formally adopted on 24 June 2024) includes requirements for setting a satisfactory level for soil carbon stocks and targets for restoring peatland soils.
15. ESS found ([The risks to Scotland's soils: a scoping report](#)) that the Scottish Government is falling behind international best practice in this area. Therefore, ESS recommended:

“Under its commitment to keep pace with EU law, the Scottish Government should bring forward legislative proposals that reflect the proposed EU Soil Monitoring Law and Nature Restoration Law by introducing a statutory duty to protect and monitor soil, creating mandatory targets for restoration of drained peatland soils and reassessing contaminated land and soil sealing policy...”

Marine Litter

16. ESS found ([Marine litter – an assessment of sources, controls and progress in Scottish seas](#)) that the UK is failing to achieve statutory targets (set under the Marine Strategy Regulations 2010) to achieve good environmental status for marine litter, with the abundance of beach and floating litter across the UK still far exceeding threshold

² The Urban Waste Water Treatment Regulations (Scotland) Regulations 1994
The Water Environment and Water Services (Scotland) Act 2003
The Water Environment (Controlled Activities) (Scotland) Regulations 2011

values set to reduce harm. Marine litter impacts both the environment and marine organisms in a variety of ways.

17. ESS' analysis identified that the EU have recently initiated several measures (across a range of policy areas) with the potential to reduce the generation of marine litter.

Therefore, ESS recommended:

“The Scottish Government should set out how it proposes to maintain alignment with regulatory developments in the EU that are aimed at reducing microplastics in the marine environment. Relevant developments include:

- recently adopted measures to restrict the intentional inclusion of microplastics (covering all synthetic polymer particles below 5 mm that are organic, insoluble and resist degradation) into products under the REACH Regulations ([Regulation 2023/2055](#))
- the [recast Urban Waste Water Treatment Directive](#) (see also above) that will introduce requirements to monitor microplastics in wastewater inlets/outlets and undertake treatment of wastewater to remove microplastics
- a [proposal](#) to introduce the first regulatory measures to directly tackle pollution from the unintentional release of plastic pellets across the pellet supply chain
- The recently adopted [Regulation 2024/1257](#) that sets requirements for manufacturers to measure tyre abrasion and for the EU Commission to define abrasion limits for tyres”

Waste Regulation and Development of Circular Economy

18. ESS has identified that there has been a considerable degree of change in EU law pertaining to waste regulation and the development of the circular economy, including:

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- Regulation on Persistent Organic Pollutants 2022/2400 (adopted 23 November 2022).
- Batteries and Waste Batteries Regulation [2023/1542](#) (adopted 12 July 2023)
- Revised EU Waste Electrical and Electronic Equipment Directive [2024/884](#) (adopted 13 March 2024)
- Waste Shipment Regulation [2024/1157](#) (adopted 11 April 2024)
- Critical Raw Minerals Regulation [2024/1252](#) (adopted 11 April 2024)
- Ecodesign for Sustainable Products Regulation [2024/1781](#) (adopted 13 June 2024)
- Right to Repair Directive [2024/1799](#) (adopted 13 June 2024)

19. In addition, several EU proposals are currently under consideration as part of the ordinary legislative procedure:

- Revision of Waste Framework Directive [2023/0234](#)
- Packaging and Packaging Waste Regulation [2022/0396](#)
- Circularity Requirements for Vehicle Design and Management of End-of-Life Vehicles Regulation ([2023/0284](#))

20. In [responding](#) to the Net Zero, Energy and Transport Committee's call for views on the Circular Economy (Scotland) Bill (August 2023), ESS highlighted this high degree of change and advised that the measures proposed under the Circular Economy (Scotland) Bill must:

“...complement and integrate with wider legislative developments at both an UK and European level. In light of the degree of change in this area, careful monitoring and (where necessary) implementation of further measures not currently proposed under

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the Bill will be necessary to ensure Scotland maintains alignment with wider developments and is able to establish a circular economy in Scotland.”

21. ESS reiterated this position in [responding](#) to the Scottish Government’s consultation on the Circular Economy and Waste Route Map (March 2024), ESS advised that:

“careful monitoring and (where necessary) implementation of Scottish legislation was required to ensure Scotland maintains alignment and is well-placed to establish a circular economy in Scotland.”

Persistent Organic Pollutants

22. In responding to Net Zero, Energy and Transport Committee’s consideration of the Persistent Organic Pollutants (Amendment) Regulations 2024, ESS provided comment on the significance of this divergence and the environmental implications, highlighting:

“There is a robust evidence base that these substances are harmful to the environment and human health. The EU approach, where different to the UK approach, takes a more precautionary approach when setting the concentration limits for POPs...”

And

“It is unclear whether this evidence basis applies equally in Scotland and therefore whether the UK Government’s rationale for less stringent standards than the EU is appropriate in a Scottish context. The Scottish Government should seek (through partnership with the UK Government or independently) to address the evidence gaps highlighted in the notification letter promptly and consider what approaches to develop capacity and technology might be feasible to ensure that implications for the environment and human health in Scotland are fully understood. It is unclear whether the evidence base produced by Defra to develop the UK policy options and support the consultation is fully applicable to Scotland.”

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23. ESS also highlighted the potential benefits of publishing an appropriate and proportionate record of the considerations on the application of the [guiding principles on the environment](#).

Integrated Authorisation Framework

24. [ESS responded](#) to the Scottish Government's consultation on proposals to incorporate SEPA's four main regulatory regimes into a single authorisation framework, by amending the Environmental Authorisations (Scotland) Regulations 2018. The draft amended Regulations integrate many extant regulations, which originate from EU Directives. ESS noted that:

“If Scotland is to keep pace with developments in environmental law and maintain alignment with EU environmental standards (as the Scottish Government has committed to), it is likely that the Environmental Authorisation (Scotland) Regulations will require frequent amendment. For context, from 2013 to 2023 (inclusive), the regulations to be integrated were amended a total of 102 times, representing an average of nine amendments per year. This high degree of change is compounded by the current pace of development at an EU level, with revisions to many of the core directives underway (including the Waste Framework Directive, Water Framework Directive and Industrial Emissions Directive)...It is therefore key that consideration is given to the adaptiveness of the framework and how potential barriers to future adaptation can be minimised. This will ensure that the IAF remains fit for purpose into the future and delivers robust environmental protection.”

Antimicrobial Resistance

25. ESS commissioned a literature review on antimicrobial resistance to develop a better understanding of the causes, impacts and controls of it in relation to the environment in Scotland. The review identified:

“On 1 June 2023, the European Parliament adopted a [resolution](#) on EU action to combat antimicrobial resistance. Since the UK is no longer a member state of the EU, one area of key attention is the direction of future UK policy regarding the

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control of antimicrobial use in agriculture. Previous examples of EU-led regulation include the 2006 ban on the use of antibiotics as growth promoters in animal feeds. More recently, in January 2022, the EU banned the import of meat, dairy, fish and eggs that have been produced using antibiotics to stimulate rapid growth in the animals.”

ESS will continue to monitor ongoing and future developments in EU environmental policy and law. I hope this information is useful in the Committee’s considerations.

Yours sincerely,



Mark Roberts
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